

# **EXHIBIT**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

4 v.

05 Cr. 621 (KMK)

5 ALBERTO VILAR  
6 GARY TANAKA,

Hearing

Defendant.

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7 New York, N.Y.  
8 August 9, 2006  
9 9:45 a.m.

Before:

10 KENNETH M. KARAS

District Judge

11 MICHAEL J. GARCIA  
12 United States Attorney for the  
13 Southern District of New York  
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15 New York, N.Y. 10007  
16 DEIRDRE A. McEVOY  
17 MARC O. LITT  
18 Assistant United States Attorneys

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Litt - cross

1 MS. McEVOY: Objection to the characterization.

2 THE COURT: I mean, what -- I don't understand, are  
3 you asking him whether or not what he said at that  
4 December 14th conference was the truth?

5 MR. HOFFMAN: Correct.

6 THE COURT: Okay. Was that the truth, Mr. Litt, what  
7 you said back then?

8 THE WITNESS: I believe that to be true at the time,  
9 yes.

10 THE COURT: Is it still true?

11 THE WITNESS: I need to see the -- all the words.

12 THE COURT: All right, all right. Go ahead,  
13 Mr. Hoffman.

14 (Document provided to the witness by Mr. Hoffman)

15 THE COURT: Page eight and page nine, right, Mr.  
16 Hoffman?

17 MR. HOFFMAN: Those are the only two pages there.

18 THE COURT: Okay.

19 (Pause while witness reviews document)

20 A. My current recollection, and I testified about this on May  
21 31st, my current recollection differs from this in that I now  
22 do not believe that I was on the train. I believe the  
23 conversation, yes, occurred toward the end of the day. I  
24 believe it occurred sometime in the afternoon or early evening  
25 but I was not on the train. And I can, if you'd like, go

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Litt - cross

1 through everything that Mr. Licker said, which is -- I mean the  
2 gravamen of it is in this paragraph.

3 Q. Okay.

4 A. It's slightly different, but I testified to that on May  
5 31st.

6 Q. So in answer to the Court's question as to whether the  
7 statements made on that date -- I just don't have it in front  
8 of me -- were accurate, is that it was accurate other than that  
9 you don't believe you're on the train; is that correct?

10 A. It was accurate at the time, and the substance, the  
11 gravamen of the conversation, that is, that Mr. Licker got on  
12 the phone with me and suggested, and here's what he said; it's  
13 been a long day, my people are tired, your people are tired, we  
14 want to go home, I have your subpoena, I've agreed -- we've  
15 agreed to preserve the documents. I don't really think you  
16 want all this stuff anyway, so why don't you stop the search,  
17 and we have the subpoena, and we'll proceed that way instead.

18 Q. Okay. And so when you say in this statement on  
19 December 14th, 2005 that, in this conversation that occurred  
20 late in the day, but you may not have been on the train, that  
21 Mr. Licker said, and I think it would be for Amerindo and more  
22 efficient for you if you give us the subpoena, is that what you  
23 still believe today he said at that time?

24 A. No. And what I said --

25 THE COURT: You weren't sure if he -- whether he

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Litt - cross

1 already had the subpoena. You read earlier --

2 MR. HOFFMAN: Yes.

3 THE COURT: -- left whether or not he had the subpoena  
4 open.

5 BY MR. HOFFMAN:

6 Q. Is that correct, your statement?

7 A. Well, the words speak for themselves. But what I said  
8 right after that was words to the effect of, and I'm not even  
9 sure whether or not he already had the subpoena or not.

10 Q. Okay.

11 A. As I sit here today, I believe, quite firmly, that he had  
12 the subpoena because it was faxed to him at approximately 1:27  
13 and our conversation occurred several hours later.

14 Q. So would it be accurate to say that when you made the  
15 statement that we just went over on December 14th, at that  
16 time -- my only question is -- you did not know whether or not  
17 Mr. Licker was requesting the subpoena in the evening hours?

18 A. Well --

19 MR. COLTON: I'm going to object to that question  
20 because it was so vague, that I don't want the record to be --

21 THE COURT: Yeah, I agree, I agree, I agree. It is a  
22 vague question.

23 Q. When you stated on December 14th that Mr. Licker either  
24 already had the subpoena or may have gotten it earlier in the  
25 day --